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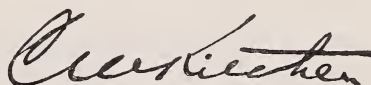
United States Department of Agriculture

AGRICULTURAL MARKETING SERVICE

SERVICE AND REGULATORY ANNOUNCEMENTS 107

RULES AND REGULATIONS OF THE SECRETARY OF AGRICULTURE FOR THE ENFORCEMENT OF THE PRODUCE AGENCY ACT

NOTE.—Under and by virtue of authority vested in the Secretary of Agriculture by act approved March 3, 1927 (44 Stat. 1355, 7 U. S. C. 494) entitled "An act to prevent the destruction or dumping, without good and sufficient cause therefor, of farm produce received in interstate commerce by commission merchants and others and to require them truly and correctly to account for all farm produce received by them," the Secretary of Agriculture on May 17, 1927 promulgated rules and regulations for the enforcement of this act; and the Secretary of Agriculture on October 2, 1929 and July 6, 1939 promulgated amendments thereto. These rules and regulations are now reprinted as a Service and Regulatory Announcement of the Agricultural Marketing Service in the form in which they appear as part 47 of chapter I of title 7 of the Code of Federal Regulations.



Chief, Agricultural Marketing Service.

(Title 7, Ch. I, Pt. 47 of the Code of Federal Regulations)

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DEFINITIONS

47.1 Meaning of words.—Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand. (Reg. 1, sec. 1.)

47.2 Terms defined.—For the purpose of the regulations in this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) *The Produce Agency Act, or the act.*—An act of Congress entitled "An act to prevent the destruction or dumping, without good and sufficient cause

therefor, of farm produce received in interstate commerce by commission merchants and others, and to require them truly and correctly to account for all farm produce received by them," approved March 3, 1927 (44 Stat. 1355; 7 U. S. C. 491-497).

(b) *Person*.—Individual, firm, association, or corporation.

(c) *Secretary*.—The Secretary of Agriculture of the United States.

(d) *Chief of Service*.—The Chief of the Agricultural Marketing Service of the United States Department of Agriculture.

(e) *Produce*.—The term "produce" as used in the act means fruits, vegetables, melons, dairy or poultry products, or any perishable farm products of any kind or character.

(f) *Good and sufficient cause*.—This term with respect to destroyed, abandoned, discarded, or dumped produce, shall be deemed to mean that the produce so dealt with had no commercial value, or that some other legal justification for so dealing with such produce existed, such as an order of condemnation by a health officer or definite authority from the shipper.

(g) *To account therefor*.—This term, as used in the act, shall be deemed to mean that the consignee of produce shall, within a reasonable time after it has been disposed of, render to the consignor a true and correct statement of the gross sales, charges, net proceeds, and the disposition of any produce not sold, and shall make full payment of the net proceeds to the consignor: *Provided, however*, That the consignor and consignee may in writing agree upon a date or time for the submission of the account sale and the making of payment. (Reg. 1, sec. 2.)

ADMINISTRATION

47.3 Chief of Service.—The Chief of Service shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in enforcing the provisions of this act and the rules and regulations in this part. (Reg. 2, sec. 1.)

VIOLATIONS

47.4 Destroying or dumping.—Any person receiving produce in interstate commerce or in the District of Columbia for or on behalf of another who, without good and sufficient cause therefor, shall destroy or abandon, discard as refuse, or dump any produce, directly or indirectly or through collusion with any person, shall be considered to have violated the act. (Reg. 3, sec. 1.)

47.5 False report or statement.—Any person receiving produce in interstate commerce or in the District of Columbia for or on behalf of another shall be considered to have violated the act if knowingly and with intent to defraud he makes any false report or statement to the person from whom such produce was received concerning the handling, condition, quality, quantity, sale, or disposition thereof. (Reg. 3, sec. 2.)

47.6 Failure to account.—Any person receiving produce in interstate commerce or in the District of Columbia for or on behalf of another shall be considered to have violated the act if knowingly and with intent to defraud he fails truly and correctly to account to the person from whom such produce was received for the actual price received for that specific produce, and the actual expenses incurred and charges made incident to the handling and disposition of the same, unless a different basis of settlement is agreed upon between them. (Reg. 3, sec. 3.)

CERTIFICATES OF INSPECTION

47.7 Certificates; by whom issued.—(a) The following classes of persons are hereby designated to make investigations regarding the quality and condition of produce received in interstate commerce or in the District of Columbia, and to issue certificates as to the quality and condition of such produce which is to be destroyed, abandoned, discarded as refuse, or dumped, upon application of any person shipping, receiving, or financially interested in such produce:

(1) Any authorized inspector of the United States Department of Agriculture under the farm products inspection law (7 U. S. C. 414 and Sup.).

(2) Any health officer or food inspector of any State, county, parish, city, or municipality.

(3) Any two disinterested persons, engaged at the time of the investigation, and for a period of at least 1 year next prior thereto, in the handling of the same general kind or class of produce as that to be inspected, and having no financial interest therein or in the business of any person financially interested therein, and unrelated by blood or marriage to such person. Any certificate issued by two disinterested persons under this section must include a statement that they possess the above qualifications.

(b) Investigation and certification as to the quality and condition of produce shall be made by two disinterested parties only when inspectors of the classes designated (1) and (2) are not available. (Reg. 4, sec. 1.)

47.8 Certificate; contents.—Any certificate under the act must identify the particular lot of produce inspected, give the date upon which the inspection was made, the approximate quantity of the produce, the name and address of the agent handling the same, the fee, if any, charged therefor, and shall state the quality and condition of such produce and that it was without commercial value at the time of the inspection. (Reg. 4, sec. 2.)

47.9 Application for inspection; how made; contents.—Application for an inspection under the act must be made or confirmed in writing to the person requested to make such inspection. The application must show the name and address of the shipper, the name and address of the applicant, the location and description of the produce, with marks, brands, or other specific identification if practicable. (Reg. 4, sec. 3.)

47.10 Copy of certificate to Chief of Service.—Any person issuing a certificate under the rules and regulations in this part must mail a copy of the certificate promptly to the Chief of the Service. (Reg. 4, sec. 4.)

COMPLAINTS

47.11 Filing of complaints.—Any person having reason to believe that the act has been violated should submit all available facts with respect thereto to the Chief of Service for investigation and appropriate action. (Reg. 5, sec. 1.)

APPENDIX

THE PRODUCE AGENCY ACT

(Approved March 3, 1927. 44 Stat. 1355)

AN ACT To prevent the destruction or dumping, without good and sufficient cause therefor, of farm produce received in interstate commerce by commission merchants and others and to require them truly and correctly to account for all farm produce received by them.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That after June 30, 1927, any person, firm, association, or corporation receiving any fruits, vegetables, melons, dairy or poultry products, or any perishable farm products of any kind or character, hereinafter referred to as produce, in interstate commerce, or in the District of Columbia, for or on behalf of another, who without good and sufficient cause therefor, shall destroy, or abandon, discard as refuse or dump any produce directly or indirectly, or through collusion with any person, or who shall knowingly and with intent to defraud make any false report or statement to the person, firm, association, or corporation from whom any produce was received, concerning the handling, condition, quality, quantity, sale or disposition thereof, or who shall knowingly and with intent to defraud fail truly and correctly to account therefor shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$100 and not more than \$3,000, or by imprisonment for a period of not exceeding one year, or both, at the discretion of the court. The Secretary of Agriculture shall by regulation provide for the making of prompt investigations and the issuing of certificates as to the quality and condition of produce received in interstate commerce or in the District of Columbia, upon application of any person, firm, association, or corporation shipping, receiving, or financially interested in, such produce. Such regulations shall designate the classes of persons qualified and authorized to make such investigations and issue such certificates, except that any such investigation shall be made and any such certificate shall be issued by at least

two disinterested persons in any case where such investigation is not made by an officer or employee of the Department of Agriculture or of any State or political subdivision thereof or of the District of Columbia. A certificate made in compliance with such regulations shall be prima facie evidence in all Federal courts of the truth of the statements therein contained as to the quality and condition of the produce; but if any such certificate is put in evidence by any party, in any civil or criminal proceeding, the opposite party shall be permitted to cross-examine any person signing such certificate, called as a witness at the instance of either party, as to his qualifications and authority and as to the truth of the statements contained in such certificate.

SEC. 2. The Secretary of Agriculture is hereby authorized and directed to enforce this Act. It is hereby made the duty of all United States attorneys to prosecute cases arising under this Act, subject to the supervision and control of the Department of Justice.

SEC. 3. The Secretary of Agriculture may make such rules and regulations as he may deem advisable to carry out the provisions of this Act and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and may call upon any Federal department, board, or commission for assistance in carrying out the purposes of this Act; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law and make such expenditures for rent, outside the District of Columbia, printing, telegrams, telephones, books of reference, books of law, periodicals, newspapers, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be deemed necessary to the administration of this Act in the District of Columbia and elsewhere and there is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of \$25,000 to be available for expenditure during the fiscal year beginning July 1, 1927, and the appropriation of such additional sums as may be necessary thereafter to carry out the purposes of this Act is hereby authorized. This Act shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this Act, but it is intended that all such statutes shall remain in full force and effect, except in so far only as they are inconsistent herewith or repugnant hereto.

SEC. 4. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

Approved, March 3, 1927.